Anwar bin Ibrahim v Abdul Khalid @ Khalid Jafri bin Bakar Shah

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S1-23-40 OF 1998
MOHD NOOR AHMAD J
31 JULY 1998

***Civil Procedure** — Injunction — Interlocutory injunction restraining publication of defamatory allegations — Whether serious issues to be tried — Whether injuries suffered can be compensated by monetary damages — Whether public interest a relevant consideration*

The plaintiff applied for an interlocutory injunction to restrain the defendants from writing, repeating, printing, publishing and/or distributing a book entitled '50 Dalil Mengapa Anwar Tidak Boleh Jadi PM' ('the book') which the plaintiff claimed is defamatory until after the disposal of the suit. The plaintiff's action was based on defamation and tort of conspiracy. His amended statement of claim disclosed several instances which he claimed were defamatory to him. The defendants denied that the allegations against the plaintiff in the book are false and defamatory and asserted that the allegations are true and that they will rely on the defence of justification, fair comment and qualified privilege.

Held, allowing the plaintiff's application:

(1) On the balance of probabilities, the instances referred to in the amended statement of claim were obviously untruthful. Hence, the court need not consider malice on the part of the defendants (see pp 372I and 373A–B).

(2) The plaintiff had demonstrated serious issues to be tried, in particular whether the sole or dominant purpose of the combination or conspiracy and publication of the book was to injure the plaintiff (see p 375C).

(3) With regard to the injuries that the plaintiff would suffer if the interlocutory injunction were not granted, having regard to the nature and gravity of the alleged defamatory statements, expressions or words and the high office that the plaintiff held in the government and the political party, the injuries envisaged were irreparable and could not be compensated by monetary damages (see p 375E–F).

(4) Public interest was relevant for the consideration of balance of convenience for the purpose of maintaining the status quo. The court cannot be insensitive to its surroundings if real and meaningful justice is to be done. It must, within the bounds of the law, complement and supplement the national aspirations which are in the realm of public interest and to strike down anything that hinders them. In this case, the alleged defamatory instances affected not only the plaintiff but had detrimental

consequences to the public. Therefore, the balance of convenience lay in favour of the plaintiff (see pp 375G, I and 376A–B, F). A

[Bahasa Malaysia summary

Plaintif telah memohon untuk satu injunksi interlokutori bagi menahan defendan-defendan daripada menulis, mengulang, mencetak, menerbit dan/atau mengedar naskhah buku yang berjudul '50 Dalil Mengapa Anwar Tidak Boleh Jadi PM' ('buku tersebut') yang plaintif katakan memfitnah sehingga selepas penyelesaian guaman. Tindakan plaintif adalah berdasarkan fitnah dan tort komplot. Pernyataan tuntutan terpinda beliau mendedahkan beberapa kejadian yang mana beliau katakan memfitnahnya. Defendan-defendan menafikan bahawa pengataan-pengataan terhadap plaintif dalam buku tersebut adalah palsu dan memfitnah dan menegaskan bahawa pengataan-pengataan adalah benar dan bahawa mereka bergantung kepada pembelaan justifikasi, komen berpatutan dan perlindungan bersyarat. B C D

Diputuskan, membenarkan permohonan plaintif:

(1) Atas imbangan kebarangkalian, kejadian-kejadian yang dirujuk dalam pernyataan tuntutan terpinda dengan jelasnya adalah tidak benar. Justeru itu mahkamah tidak perlu mempertimbangkan niat jahat pada pihak defendan-defendan (lihat ms 372I dan 373A–B). E

(2) Plaintif telah menunjukkan isu-isu serius yang perlu dibicarakan, terutamanya sama ada tujuan tunggal atau utama kombinasi itu atau komplot dan penerbitan buku tersebut adalah untuk mencedera plaintif (lihat ms 375C). F

(3) Berkenaan dengan kecederaan yang akan ditanggung oleh plaintif sekiranya injunksi interlokutori tidak diberikan, dengan mengambil kira sifat dan keseriusan pernyataan, ungkapan atau perkataan memfitnah yang dikatakan dan jawatan tinggi yang disandang oleh plaintif dalam kerajaan dan parti politik, kecederaan yang dibayangkan tidak mungkin boleh dipulihkan dan tidak boleh dipampas oleh ganti rugi dalam bentuk wang (lihat ms 375E–F). G

(4) Kepentingan awam adalah relevan untuk pertimbangan imbangan kesesuaian untuk tujuan mengekalkan status quo. Mahkamah tidak boleh mengabaikan alam sekeliling andainya keadilan sebenar dan yang bermakna hendak dicapai. Ia mestilah, dalam batasan undang-undang, melengkapi dan menambah aspirasi kebangsaan yang terletak dalam liputan kepentingan awam dan menentang apa saja yang menghalangnya. Dalam kes ini, kejadian memfitnah yang dikatakan menjejas bukan sahaja plaintif tetapi mempunyai akibat yang padah kepada masyarakat awam. Maka, imbangan kesesuaian memihak kepada plaintif (lihat ms 375G, I dan 376A–B, F).] H I

A **Notes**

For a case on interlocutory injunction restraining publication of defamatory allegations, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) para 2183.

B **Cases referred to**

American Cyanamid Co v Ethicon Ltd [1975] AC 396 (refd)
Bonnard v Perryman [1891] 2 Ch 269; *Monson v Tussauds Ltd* [1894] 1 QB 671 (refd)
Fraser v Evans & Ors [1969] 1 QB 349 (refd)
C *Goh Joon Hai & Ors v Malaysian Association of Certified Public Accountants* [1997] 2 MLJ 314 (refd)
Gulf Oil (GB) Ltd v Page & Ors [1987] 3 All ER 14 (refd)
Harakas & Ors v Baltic Merchantile and Shipping Exchange Ltd & Anor [1982] 2 All ER 701 (refd)
D *Herbage v Pressdram Ltd & Ors* [1984] 1 WLR 1160 (refd)
Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors [1995] 1 MLJ 19 (refd)
New Straits Times Press (M) Bhd, The v Airasia Bhd [1987] 1 MLJ 36
Quartz Hill Consolidated Gold Mining Co v Beall (1882) 20 Ch D 501

E **Legislation referred to**

Bankruptcy Act 1967 s 38(1)(a)
Federal Constitution art 10
Printing Presses and Publications Act 1984 s 7
F Rules of the High Court 1980 O 78 r 3(2)
Sedition Act 1948 s 3(1)
Penal Code (FMS Cap 45) s 499

Cyrus Das (*Mohd Faiz Abdullah, Sulaiman Azmil, Clement Lopez* and *Leela Jesuthasan*) (*Faiz & Co*) for the plaintiff.
G *Mohd Haniff Khatri Abdulla* (*Joseph Jones Fernandez* and *Rudeen Chua*) (*Haniff & Rajendran*) for the defendants.

Cur Adv Vult

H **Mohd Noor Ahmad J**: This is an application by the plaintiff for an interlocutory injunction to restrain the defendants whether by themselves and/or through their representatives, agents, servants and/or whomsoever authorized by them and/or appointed to represent them and/or any other person from writing, repeating, printing, publishing and/or distributing a book entitled '50 Dalil Mengapa Anwar Tidak Boleh Jadi PM' ('the book')
I (exh AI-1 in encl (2)) or any part thereof and/or any word contained therein whether by itself or together with photographs and/or caricatures appearing therein which is defamatory of the plaintiff whether in its usual and ordinary meaning and/or by innuendo until after the disposal of the

suit (encl (21)). At the same time the defendants seek, inter alia, to set aside the ex parte interlocutory injunction dated 23 June 1998 (encl (24)). Both applications were heard together. A

Before the hearing started, I was informed by the representative of the Official Assignee that the first defendant is/was an undischarged bankrupt and therefore, he was caught by the provisions of s 38(1)(a) of the Bankruptcy Act 1967 by which he had to obtain the prior consent of the Official Assignee before proceeding with his application to set aside the ex parte interlocutory injunction. I ruled that he had the locus standi because he was not maintaining an action but merely responding to the plaintiff's application for the injunction. B

Previously on 17 June 1998 on a certificate of urgency, the plaintiff obtained an ex parte interlocutory injunction from this court more or less for the same purpose as the present application (encl (5)) which was set aside on 23 June 1998 by reason of incorrect citations of the defendants' names, especially that of the second defendant which was substantive. The injunction was not served on the defendants then. On the same day through a fresh application (encl (13)) also on a certificate of urgency, the plaintiff secured an ex parte interlocutory injunction also for the same purpose (encl (15)) which the defendants now seek to set aside. By reason of the fact that the life span of the ex parte interlocutory injunction is only two weeks from the date on which it was granted, on 4 July 1998, with the consent of the parties, an interlocutory injunction for the same purpose was granted to the plaintiff. C D E

The plaintiff is the Deputy Prime Minister, Minister of Finance, Deputy President of UMNO and a Member of Parliament. The first defendant is the author of the book and the second defendant is the publisher. Both defendants are husband and wife. F

The book which is in a paperback form has 360pp in which the names of the author and the publisher are printed and priced at RM20. It contains 32 chapters through which the photographs of certain personalities within and abroad appear.

The plaintiff had amended and filed the amended statement of claim (encl (30)) ('the ASC'). In the ASC the plaintiff prayed, inter alia, for the following reliefs: G

(a) (i) damages for libel;

(ii) damages for tort of conspiracy; and

(iii) aggravated damages; H

(b) a permanent injunction for the same purpose as prayed for in the present application.

The practice of the court is to state in full the impugned defamatory statements, expressions or words and the nature of the defamation claimed in the judgment. However, for the reason which I shall state later, I refrain from quoting in this judgment the defamatory statements, expressions or words and their nature. References are made only to the relevant pages, paragraphs and lines in the book and in the pleadings and the affidavits filed. I

A The gravamens of the plaintiff's claim as reflected in the ASC are concerned with eight instances which are claimed to be defamatory of the plaintiff in their usual and ordinary meaning and/or by innuendo, namely:

(1) at p 76 of the book, cited in para 4(a);
(2) at p 81 of the book, cited in para 4(b);
B (3) at p 91 of the book, cited in para 4(c);
(4) at p 27 of the book, cited in para 4(d);
(5) at p 48 of the book, cited in para 4(e);
(6) at p 98 (assumed) of the book, cited in para 4(f);
C (7) at p 86 of the book, cited in para 4(g); and
(8) at pp 32–33 of the book, cited in para 4(h).

The plaintiff maintained that the allegations are false. Therefore, the plaintiff claimed that by the said publication, the defendants intended to degrade or to disparage him and to expose him to public hatred, contempt
D and ridicule and in doing so he has been greatly injured in his reputation and in his office, both official and political. The plaintiff pitched his claims on two causes of action, that is to say, defamation and tort of conspiracy.

The first and the second defendant in their affidavits admitted having written and published the book, respectively. However, they denied that
E the allegations against the plaintiff are false and defamatory of the plaintiff, and asserted that the allegations are true and that they will rely on the defence of justification, fair comment and qualified privilege, which are restrictively amplified as follows (encls (23) and (33)):

Re instance (1)

F The truth of the allegation is revealed in the so-called statement on oath of the person involved, who will be called as a witness at the main trial. The statement appears at pp 76–78 in the book and exhibited as exh KJ-7 in the first defendant's affidavit (encl (33)).

Re instance (2)

G This can be justified from events that arose after a confidential report was made to the Prime Minister by the maker of the report, a copy of which was given to the first defendant which was incorporated in the book at pp 53, 55–57 and 59 to 74 and exhibited as exh KJ-6 in his affidavit (encl (33)). The police must have in their possession the
H record relating to the arrest of the maker of the confidential report and of the maker's statements made to the police whilst under detention during the police investigation, of which the court can make an order for its production for the scrutiny of the plaintiff to determine the basis of the allegation. And further, the persons arrested
I will be called to testify at the main trial.

Re instance (3)

The truth of the allegation can be proved by medical examination of the plaintiff and/or the persons involved. And further, the persons

concerned can be called to testify as to the truth of the allegation at the main trial. A

Re instances (4) and (5)

The allegation can be proved from the information obtained from some political figures and from written evidence in their possession which had been revealed to the first defendant at the research stage of writing the book. The first defendant undertakes to call them and for the production of the relevant documents at the trial proper. B

Re instance (6)

The defendants rely on the assertions under instance (1). C

Re instance (7)

The statement does not mean that the plaintiff was involved in the accident. The statements are true and formed the basis of the police report relating to the accident which happened on 4 July 1998 as referred to in the ASC. D

Re instance (8)

The events referred thereto are true and correct. The facts relating to the receptions given by the Government of the United States of America to the plaintiff and other more important personalities can be established through witness from the US Government who will be called to testify. E

Further, the first defendant stated that he is a writer and a journalist with 30 years of experience. He had produced several articles in the form of genuine and academical critics touching various issues of public interests in Malaysia such as, current issues on public office and public interest in the local newspapers, articles and pamphlets from time to time. Some of his works are exhibited as exh KJ-5 in encl (23). He contended that the issues raised in the book are concerned with the acts of the plaintiff who holds a high public office and also it is in the public interest that he, as a writer and reporter, owes a duty to inform the members of the public those issues without interference, fear and/or favour. To my mind, the particulars given by the defendants under the circumstances as described therein are sufficient for the purpose of O 78 r 3(2) of the Rules of the High Court 1980. F G

On the affidavit evidence including documentary evidence, I am satisfied that the impugned statements, expressions and words refer to the plaintiff and, in their usual and ordinary meaning and/or by innuendo, they convey the meaning as claimed by the plaintiff. The issue now is whether an interlocutory injunction as prayed should be granted? H

It is trite that injunction is a discretionary remedy and the discretion whether or not to grant the injunction must be exercised by the judge judiciously, that is to say, in accordance with established principles. Where the cause of action is defamation the principles are different from those where the cause of action is the tort of conspiracy. I

A *Re defamation*

According to long established practice, the principles in the celebrated House of Lord's case of *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 relating to interlocutory injunctions are not applicable in an action for defamation (see *Herbage v Pressdram Ltd & Ors* [1984] 1 WLR 1160). The B general rule has always been that an interlocutory injunction will not be granted against a defendant in a defamation action if he intends to plead justification, fair comment or qualified privilege unless the plaintiff can prove that the statement is untrue or the defence will not succeed (see *Quartz Hill Consolidated Gold Mining Co v Beall* (1882) 20 Ch D 501; C *Bonnard v Perryman* [1891] 2 Ch 269; *Monson v Tussauds Ltd* [1894] 1 QB 671; *Fraser v Evans & Ors* [1969] 1 QB 349 and *Harakas & Ors v Baltic Merchantile and Shipping Exchange Ltd & Anor* [1982] 2 All ER 701). The principle was followed by the then Supreme Court in *The New Straits Times Press (M) Bhd v Airasia Bhd* [1987] 1 MLJ 36 where Abdul Hamid Ag LP (as he then was) stated at p 39:

D

> The principle has clearly emerged by reason of the fact that the questions of libel or no libel are eminently matters to be decided on facts at the trial and there is also the question of the proper meaning to be assigned to the words used in a particular statement. To restrain a defendant before the questions are determined would amount to fettering with free speech. Indeed, it is E because of the importance of leaving free speech unfettered that the court must be slow in issuing interim injunction in a libel action.
>
> In applying these principles, value is placed by the court upon the freedom of speech which is related to the freedom of the press when balancing it against the reputation of a single individual who, if wronged, can be adequately compensated in damages. The court should act cautiously F in granting interim injunction to restrain publication of an alleged defamatory statement. In fact, it should not grant the injunction where the defendant says he is going to justify it at the trial of the action except where the statement is obviously untruthful or where the plaintiff has satisfied the court that the defence will fail. That was made clear by Denning MR in *Harakas v Baltic Exchange* [1982] 2 All ER 701 at p 703.

G The questions for my consideration now is whether the impugned statements, expressions or words in the book are obviously untruthful or whether the plaintiff has satisfied the court that the defence will fail. The burden is on the plaintiff to satisfy the court that at least either one of the exceptions applies in this case. For this purpose, the particulars of the H defendants' assertions as amplified in para 9 above will have to be examined and considered against what the plaintiff has stated about them in his affidavits (encls (28) and (34)) which are as follows:

Re instance (1)

> The plaintiff has in his possession documentary proof that the maker I of the so-called statement on oath had denied having made it, which will be produced at the inspection of documents stage.

Re instance (2)

The plaintiff has in his possession documentary proof denying the truth of the contents of the confidential report, which will be produced at the inspection stage. The statements in the particulars are merely speculative.

Re instance (3)

The statements in the particulars are merely speculative.

Re instances (4) and (5)

The allegations are bare.

Re instance (6)

Same as for instance (1).

Re instance (7)

The plaintiff claims that the statement by innuendo is defamatory of him if read in the context of the book as a whole.

Re instance (8)

The allegations are bare.

With regard to the defence of fair comment, the plaintiff contended that it is defeated by malice as spelt out in para 17 of encl (28), which are, briefly:

(a) manifestly clear that there is a conspiracy to destroy the plaintiff's political career;

(b) the first defendant and one Khairuddin Abu Hassan ('En KH') had acted in open defiance against the interim injunction granted on 23 June 1998 by making press statements about the book and repeating the nature of some of the alleged defamation on 26 June 1998 and 29 June 1998, respectively;

(c) the existence of a second version of the book which does not have the publishers' name and address and its price. These are clear evidence that: (i) the defendant were avoiding the process of the court with regard to the interlocutory injunctions of 17 June 1998 and 23 June 1998; and (ii) the book or at least the second version was published not for commercial purpose but as part of the conspiracy as stated in para (a) above.

In rebuttal of the plaintiff's statement under instances (1) and (2), the defendants alleged that the documentary proofs stated therein had been obtained by force from the persons concerned as described in detail in the book at pp 66–68, 76–78 and 80–87 which the plaintiff denied. To my mind, implicitly the defendants admitted the existence of the documentary proofs.

Having examined and considered the respective averments, for the purpose of deciding whether the interlocutory injunction should be granted, I am satisfied on the balance of probabilities that the statements, expressions or words referred to in the eight instances are obviously untruthful because:

(i) the maker of the so-called statement on oath had denied having made it and the truth of the contents of the confidential report had been denied and further there is not an iota of evidence that the denials had been obtained by force as alleged by the defendants; and (ii) the allegations are bare and speculative. Hence, I need not consider malice on the part of the defendants as contended by the plaintiff.

Re tort of conspiracy

It was held in *Gulf Oil (GB) Ltd v Page & Ors* [1987] 3 All ER 14 that the principle that an interlocutory injunction would not be granted to restrain publication of defamatory material where the defendant intended to plead justification did not apply where the material was being published in pursuance of a conspiracy which had the sole or dominant purpose of injuring the plaintiff. In such a case, the court should proceed on the same principles as it would in the case of any other tort, that is to say, the *American Cyanamid* case principles, in which the questions of whether triable issues have been demonstrated, whether the injury is irreparable or can be compensated by damages and the balance of convenience will come into play. It is trite that a judge hearing an application for an interlocutory injunction should:

(a) ask himself whether the totality of the facts presented before him disclosed a bona fide serious issue to be tried. He must refrain from making any determination on the merits of the claim or any defence to it and identify with precision the issues raised and decide whether they are serious enough to merit a trial. If he finds that no serious question is disclosed, the relief should be refused. If, however, he finds that there are serious questions to be tried, he should move on to the next step of his inquiry;

(b) having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. He must take into account all relevant matters, including the practical realities of the case before him and weigh the harm the injunction would produce by its grant, against the harm that would result from its refusal; and

(c) the judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and to maintain the status quo. It is a judicial discretion capable of correction on appeal. A judge should briefly set out his judgment the several factors that weighed in his mind when arriving at the conclusion.

(See *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193; *Goh Joon Hai & Ors v Malaysian Association of Certified Public Accountants* [1997] 2 MLJ 314).

Under this head, I am satisfied from the affidavit evidence including documentary that:

(a) the book was written as a long poison pen letter put together in the form of a book with the objective as set out in the title itself and its contents bear out the objective. Its contents are not only geared towards character assassination against the plaintiff but also have the tendency to pit one against the other (memperlaga-lagakan) towards creating a rift not only between the plaintiff and the Prime Minister but also between the plaintiff and other top leaders in the government and UMNO including the veterans. For this reason, I agree with Dr Cyrus Das, learned counsel for the plaintiff, that the book has no literary value.

(b) 15,000 copies of the book are known to have been printed, out of which 2,000 copies had been distributed to the delegates at the last UMNO General Assembly. Also under circulation amongst the members of the public is a second version of the book in photostated form with the same contents except without the publisher's name and address and the price. Although there is no clear evidence that the defendants are responsible in the preparation and the distribution of the second version, having regard mainly to the similarity of the contents and the real determination of the defendants and their agents to put the book into circulation especially amongst the delegates attending the General Assembly, whether for a fee or free, as reflected by their conduct and in their press statements as exhibited, made even after the grant of the ex parte interlocutory injunction, it is irresistible to conclude that the defendants, whether by themselves and/or through their agents, are implicated in the distribution. Further, the contention by the first defendant that he was not aware of the ex parte interlocutory injunction as he was allegedly in hiding for the safety of his life does not hold water because the fact of the grant of the ex parte interlocutory injunction was published practically in all the local dailies soon after it was granted by this court and it is very hard to believe that, he, as a writer and journalist, would not be interested to read at least one of the dailies concerning the book that he wrote. And further, the fact that the second version was not priced is a clear indication that the book was not produced for the sole purpose of commercial gains. This is substantiated by the fact that the counsel for the defendants did not submit at all on the issue of damages for the defendants in consequence of the grant of the ex parte interlocutory injunction, though prayed for in the application to set aside the ex parte interlocutory injunction.

(c) Encik KH is to be regarded not only as one of the agents of the defendants but also a party to the whole plot. Although En KH denied any connection with the defendants in his affidavit, to my mind, he is implicated by his conduct and statements made before and after the hearing of the applications had started, as reflected in the press statement and press reports as exhibited, in particular he funded the production of the book including compiling, printing and distributing it. I am fortified in my view by the fact that the defendants have never denied the relevant statements of En KH.

(d) Common sense will dictate that it was not an easy task for 2,000 copies of the book to be distributed to so many UMNO delegates behind the scene in the face of the ex parte interlocutory injunction of 17 June 1998 without enlisting the help of agents and other persons.

(e) The place, timing, scale and the manner of publication and distribution are pertinent to consider whether the sole or dominant purpose of the conspiracy and publication of the book is to injure the plaintiff.

Therefore, based on those findings of facts, it is my considered conclusion that the plaintiff has demonstrated serious issues to be tried, in particular whether the sole or dominant purpose of the combination or conspiracy and publication of the book is to injure the plaintiff. It was held in *Gulf Oil Ltd*'s case, at p 18H–I, viz:

> It is true that there is no wrong done if what is published is true provided that it is not published in pursuance of a combination and, even if it is, there is still no wrong unless the sole or dominant purpose of the combination and publication is to injure the plaintiff. If, however, there is both combination and purpose or dominant purpose to injure, there is a wrong done. When a plaintiff sues in conspiracy there is, therefore, a potential wrong even if it is admitted, as it is in the present case, that the publication is true and thus that there is no question of a cause of action in defamation. In such a case the court can, and in my view should, proceed on the same principles as it would in the case of any other tort.

With regard to the injuries that the plaintiff will suffer if the interlocutory injunction is not granted, my view is that, having regard to the nature and gravity of the alleged defamatory statements, expressions or words and the high office that the plaintiff holds in the government and the political party, the injuries envisaged are irreparable and cannot be compensated by monetary damages. Surely, the first defendant presently a bankrupt will not be in a position to pay the damages as the alternative.

Now, comes the consideration on the balance of convenience for the purpose of maintaining the status quo. In my opinion, public interest is relevant in this case because it goes to the consideration on the balance of convenience. On this issue, En Mohd Haniff, learned counsel for the defendants differs and submits at some length on s 7 of the Printing Presses and Publications Act 1984 and the powers of the Attorney General as the Public Prosecutor to prosecute including some authorities, within and abroad, in support of his contention. With due respect, he fails to distinguish the wood from the trees because the laws and the authorities cited are only relevant to the issues of whether there is a cause of action and who has the power to prosecute. Counsel for the plaintiff in his reply touches on s 3(1) of the Sedition Act 1948 and s 499 of the Penal Code (FMS Cap 45) (defamation). However, these matters are not for my determination but belonged to another authority, ie the Attorney General and another forum, ie the Criminal Court. Be that as it may, my view is that the court cannot be insensitive to its surroundings if real and meaningful justice is to be done. It must within the bounds of the law complement and

supplement the national aspirations which are in the realm of public interest and to strike down anything that hinders them. To my mind, the alleged defamatory instances affect not only the plaintiff but have gone beyond the plaintiff, especially, instances (2) and (8) which have the tendencies not only to create a rift between the Prime Minister and his Deputy but also to undermine public confidence in the police force, especially in its criminal investigations and to affect international relations, especially with the Government of the United States of America, and also instance (6) where by reason that the words in the banner had been improperly replaced by the questionable expression and that the persons holding the banner are mostly Malays, it has the tendency to damage the image of the country where Islam is the official religion and the image of the Malay race. Such tendencies are real and surely are not conducive to the present economic situation the country is facing in the midst of the very great efforts undertaken by the government to revive the economy. The tendencies are related to public interests. This is the main reason why I have refrained from quoting the alleged defamatory statements, expressions and words and their nature in the judgment as I used to. To me, these public interests override the public interest relating to the freedom of speech, in particular the freedom of the press. It is trite that freedom of the press is not without limits and is governed by restrictions imposed in art 10 of the Constitution, especially on defamation. Therefore, journalists do not enjoy any special position or privilege in their works but are subject to the law of the land as the ordinary man on the street. To put in a nutshell, the freedom of the press ends where the force of the law begins.

In the light of the above, I hold that the balance of convenience lies in favour of the plaintiff and the defendants can be adequately compensated by damages should they suffer as the result of the grant of the interlocutory injunction, and the plaintiff is in a position to pay.

Therefore, order in terms of the application is hereby made and by reason of Ên KH's active involvement in the production and the circulation of the book, he is to be named in the order, though he is not a party to the present proceeding. The application to set aside the ex parte interlocutory injunction by the defendants is dismissed with costs. The interlocutory injunction granted on 4 July 1998 is hereby revoked.

Plaintiff's application allowed.

Reported by Loo Lai Mee